## National Labor Relations Board



# Weekly Summary of NLRB Cases

**Division of Information** 

Washington, D.C. 20570

Tel. (202) 273-1991

May 20, 2005 W-3000

#### <u>C A S E S S U M M A R I Z E D</u> VISIT WWW.NLRB.GOV FULL TEXT

Larry Geweke Ford	Yuba City, CA	1
McNulty Plastering, Inc.	North Vernon, IN	1
Michigan Roads Maintenance Co., LLC	Detroit, MI	2
Southside Hospital	Brooklyn, NY	3
Virtua, Inc.	Marlton, Voorhees, Berlin,	
	Mt. Holly, and Camden, NJ	3

#### OTHER CONTENTS

<u>List of Decision of Administrative Law Judges</u>	4
No Answer to Complaint Cases	5

- Contested Reports of Regional Directors and Hearing Officers
- Uncontested Reports of Regional Directors and Hearing Officers
- Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders
- Miscellaneous Board Orders

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (<u>www.nlrb.gov</u>). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14<sup>th</sup> Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

The Geweke Co. d/b/a Larry Geweke Ford (20-CA-31889; 344 NLRB No. 78) Yuba City, CA May 12, 2005. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to bargain with Machinists District Lodge 190, Local Lodge 2182 regarding a change in health care plans and the Respondent's contribution to health care plans, and by implementing a new health care plan without bargaining with the Union. [HTML] [PDF]

The Board found merit in the General Counsel's exception to the judge's rejection of his request that the Respondent be required to restore the status quo ante by returning to the 2003 health care plan with its 2003 costs and benefits. Therefore, it modified the order to require that the Respondent make available the health and medical coverage benefits that were provided to unit employees before the 2003 Blue Cross health care plan was unilaterally terminated and reimburse unit employees for any expenses ensuing from the unilateral change from the 2003 Blue Cross plan.

Member Schaumber observed, in distinguishing this case from the Board's decision in *The Courier-Journal*, 342 NLRB No. 113 (2004), that the judge is correct that in *The Courier-Journal*, the health insurance changes at issue were implemented pursuant to a well established past practice to which the union had acquiesced for 10 years, both during contract terms and during contract hiatuses. He noted that as the Board pointed out in *The Courier-Journal*, an employer's "unilateral change made pursuant to a longstanding practice is essentially a continuation of the status quo—not a violation of Section 8(a)(5)." He further observed that the judge, citing *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), accurately states that "[h]ealth insurance is a mandatory subject of bargaining and the fact that the Respondent has a past practice of providing the same health plan for all its employees on a company-wide basis does not exempt it from its bargaining obligation."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Machinists District Lodge 190, Local Lodge 2182; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Yuba City on Oct. 27, 2004. Adm. Law Judge Gerald A. Wacknov issued his decision Dec. 29, 2004.

\*\*\*

McNulty Plastering, Inc. (7-CA-47571; 344 NLRB No. 80) North Vernon, IN May 12, 2005. The Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to comply with the terms of a settlement agreement by failing to remit the agreed-upon amounts due employees and failing to post a notice to employees. Pursuant to the noncompliance provisions of the settlement agreement, the Board found that all allegations of the complaint are true and that the Respondent violated Section 8(a)(1), (2), and (3) of the Act. [HTML] [PDF]

Specifically, the Board found that the Respondent violated Section 8(a)(1) and (2) by assisting Plasterers Local 67 in obtaining signed authorization cards from its employees and granting recognition to, and entering into a collective-bargaining agreement with, Plasterers Local 67, even though Bricklayers Local 9 had filed a valid petition seeking an election among the unit employees; and violated Section 8(a)(1) and (3) by entering into a collective-bargaining

agreement that contains a provision requiring employees to remain or become members of Plasterers Local 67 as a condition of employment, and by deducting union dues and fringe benefit contributions from employees' pay, even though Plasterers Local 67 was not the lawfully recognized collective-bargaining representative of the employees.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for summary judgment January 27, 2005.

\*\*\*

Michigan Road Maintenance Co., LLC d/b/a Michigan Roads Maintenance Co., LLC (7-CA-46426, 46891; 344 NLRB No. 77) Trenton, MI May 11, 2005. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by making a threat to employees regarding the futility of union activity; by making a threat to discharge employees and to close its business if its employees engaged in union activities; and by maintaining a rule prohibiting its employees from soliciting for unions or distributing union literature on its property. [HTML] [PDF]

It also found that the Respondent violated Section 8(a)(2) and (1) by distributing and soliciting signatures on authorization cards for Party in Interest, Construction Trades and Industrial Employees Local 614, and by recognizing Local 614 as the exclusive representative of the Respondent's truckdrivers and shop employees based on tainted authorization cards; and violated Section 8(a)(3) and (1) by unlawfully discharging Jeffrey A. Crawford.

Members Liebman and Schaumber reversed the judge's finding that the Respondent's operations manager, Adam Edwards, did not violate Section 8(a)(1) when he approached employee James Murray and asked Murray if he had heard about Teamsters Local 247's efforts to organize the Respondent's employees. Contrary to his colleagues, Chairman Battista found that the question Edwards posed to Murrary was not unlawful. In his view, the purpose of the question was not to extract from Murrary his sentiments regarding unionization but rather, the question was a lead-in to Edwards' threat. Chairman Battista agreed that the threat was unlawful.

Chairman Battista and Member Schaumber agreed with the judge's conclusion that the General Counsel failed to establish that Edwards created the impression of surveillance in his remarks to Crawford. Dissenting, Member Liebman would reverse the judge's conclusion that the Respondent did not violate Section 8(a)(1) by creating the impression of surveillance in the course of a conversation between Edwards and Crawford. In her view, Crawford could reasonably have assumed from Edwards' statement that his activities were under surveillance.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Teamsters Local 247 and Jeffrey A. Crawford, an Individual; complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at Detroit on June 16, 2004. Adm. Law Judge Joseph Gontram issued his decision Oct. 27, 2004.

\*\*\*

Southside Hospital (29-CA-25210; 344 NLRB No. 79) Bay Shore, NY May 12, 2005. Chairman Battista and Member Liebman agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally changed the terms and conditions of employment of the "nutrition supervisors" without affording New York's Health & Human Service Union 1199, SEIU notice and an opportunity to bargain, and violated Section 8(a)(3) by changing its nutrition supervisors' terms and conditions of employment because they joined and supported the Union. [HTML] [PDF]

Dissenting in part, Member Schaumber wrote that while he agrees with the judge and his colleagues that the Respondent's unilateral changes to the unit employees' terms and conditions of employment violated Section 8(a)(5), he does not agree that the same actions violated Section 8(a)(3). In his view the General Counsel failed to establish by a preponderance of the evidence that the Respondent's actions were motivated by antiunion animus.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by New York's Health & Human Service Union 1199, SEIU; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Brooklyn on April 9, 2003. Adm. Law Judge Jesse Kleiman issued his decision Sept. 19, 2003.

\*\*\*

Virtua Health, Inc. (4-RC-20692; 344 NLRB No. 76) Marlton, Voorhees, Berlin, Mt. Holly, and Camden, NJ May 11, 2005. Chairman Battista and Member Schaumber, with Member Liebman dissenting, found, contrary to the Regional Director, that a unit limited to the Employer's paramedics is not appropriate and, accordingly, reversed the Regional Director's decision and dismissed the petition filed by Operating Engineers JNESO-District Council 1. The Petitioner sought to represent a systemwide unit of 150 paramedics employed by the Employer at various locations throughout its southern New Jersey territory and has indicated that it is unwilling to represent paramedics in a broader unit including all technical employees. [HTML] [PDF]

The Regional Director determined that the Board's Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry), 29 CFR § 103.30, 54 Fed. Reg. 16336-16348 (1989), which requires that all technicals be included in one unit, absent extraordinary circumstances, was inapplicable in determining whether a unit limited to the Employer's paramedics was appropriate. She found that Rulemaking, which is limited to acute care hospitals, did not apply to Employer's healthcare system and that the "extraordinary circumstances" provision of the Rulemaking removed the Employer from the Rulemaking's

coverage. Applying the test for determining units in nonacute health care facilities set forth in *Park Manor Care Center*, 305 NLRB 872 (1991), the Regional Director limited the unit to the paramedics, excluding the Employer's remaining 950 technicals. She agreed with the Employer that the paramedics are technical employees. No party requested review of this finding.

Chairman Battista and Member Schaumber found it unnecessary to decide whether the Rulemaking is applicable, noting that even under the broader standard set forth in *Park Manor*, a unit limited to the Employer's paramedics is inappropriate. They concluded, contrary to the Regional Director, that *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), enf. denied sub nom. *Southwest Community Health Services v. NLRB*, 726 F.2d 611 (10<sup>th</sup> Cir. 1984), is not a comparable situation. In that case, the Board refused to reconsider its denial of review of the Regional Director's finding that a separate unit of ambulance service employees, including paramedics, EMTs, drivers, and dispatchers, was appropriate. The Regional Director had found that the ambulance service provided a service separate and apart from operations traditionally associated with service provided by a hospital or health care institution. In this case, the Employer does not operate an ambulance service, but rather provides advanced life support like medical staff in emergency rooms. See, by contrast, *North Memorial Medical Center*, 224 NLRB 218 (1976), where, in a pre-Rule case, the Board found that separation of an EMT unit from the acute care hospital's employees was not warranted.

In her dissenting opinion, Member Liebman wrote she would adopt the Regional Director's "well-reasoned and comprehensive decision" finding that a systemwide unit of the Employer's paramedics is appropriate.

(Chairman Battista and Members Liebman and Schaumber participated.)

\*\*\*

#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Ivy Steel & Wire, Inc.* (Steelworkers Local 8567-14) Hazleton, PA April 9, 2005. 4-CA-32812, et al.; JD-29-05, Judge George Alemán.

ADB Utility Contractors, Inc. (Electrical Workers [IBEW] Local 2) St. Louis, MO May 10, 2005. 14-CA-27386, et al.; JD-35-05, Judge Benjamin Schlesinger.

*Cibao Meat Products* (UNITE Local 169) Bronx, NY May 10, 2005. 2-CA-32811; JD(NY)-20-05, Judge Raymond P. Green.

*Windward Teachers Association* (Windward School) White Plains, NY May 13, 2005. 2-CB-19578-1; JD-34-05, Judge Martin J. Linsky.

#### NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Advanced Fire Technology, LLC (Plumbers Local 669) (7-CA-48266; 344 NLRB No. 74) Kalamazoo, MI May 9, 2005. [HTML] [PDF]

*Joe Kelly and Jeff Sideman, d/b/a Solid Case Work* (Carpenters Indiana/Kentucky Regional Council) (25-CA-29354; 344 NLRB No. 75) McCordsville, IN May 12, 2005. [HTML] [PDF]

\*\*\*

## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION, ORDER AND DIRECTION OF SECOND ELECTION

*Fred Meyer*, Denver, CO, 27-RC-8367, May 9, 2005 (Chairman Battista and Members Liebman and Schaumber)

\*\*\*

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

St. Mary Home, West Hartford, CT 34-RC-2119, May 11, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting)

\*\*\*

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

*Metaldyne Company, LLC,* Minerva, OH, 8-RD-1966, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

Nielsen J.C. Penney Co., Inc., Manchester, CT, 34-RC-2115, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

- The New Piper Aircraft, Inc., Vero Beach, FL, 12-RM-396, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)
- TSA Staffing, La Mirada and Santa Fe Springs, CA, 21-RC-20780, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

\*\*\*

#### Miscellaneous Board Orders

## ORDER [granting review with respect to application of the Religious Freedom Restoration Act and denying in all other respects]

Carroll College Inc., Waukesha, WI, 30-RC-6594, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

### **ORDER** [granting request to withdraw petition]

St. Barnabas Hospital, Bronx, NY, 2-RC-22623, May 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

## CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Edina, Edina, MN, 18-WH-7, May 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

## ORDER [remanding to Regional Director for further appropriate action under Section 11116.3 of the Case handling Manual]

First Student, Inc., Colmar, PA, 4-RC-20824, May 12, 2005 (Chairman Battista and Members Liebman and Schaumber)

\*\*\*